IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7655 OF 2004

Shri Iqbalbhai Ibrahim Sabuwala. Petitioner

Vs.

Sau Kusum Gulamhusein Bharmal. Respondent

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Shri V.T.Walawalkar with Shri S.R.Bhalekar for the petitioner.

Shri P.S.Dani for the respondent.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 11th OCTOBER, 2004.

P.C.

1. Heard the learned advocates for the parties. Perused the records.

2. The petitioner challenges the impugned judgment and order passed by the lower appellate Court allowing the appeal filed by the respondent against the decree of dismissal of the suit for eviction filed on the ground of bonafide requirement. The contention of the learned advocate for the petitioner is that the whole approach of the lower appellate Court was wrong in holding that what the landlord has to establish is

mere desire to occupy the premises, and ignoring the well settled law laid down by the decision of the Apex Court in **Shiv Sarup Gupta v. Dr.Mahesh Chand Gupta,** reported in (1999) 6 SCC 222 that it is not a mere desire but it has to be a genuine need of the landlord, that has to be established. In that connection, attention was drawn to the observations of the lower appellate court in paragraph 16 of the impugned judgment. Undoubtedly, the lower appellate court in the said paragraph has held that it is sufficient for the landlord to express his desire to get the premises which are owned by him. However, the said observation is coupled with further observation that "it is not necessary to establish the dire necessity but it is enough to show that some needs exist". Apparently, what the lower appellate Court has held is that it is not for the Court to sit in appeal in relation to the necessity of the landlord expressed by him while approaching the Court for eviction of a tenant on the ground of bonafide need of the premises for his occupation and what is required to be seen is as to whether the landlord by cogent evidence on record has established such need. It is now well settled that neither the tenant nor the Court can dictate the landlord as to how he has to enjoy his property and it is for him to decide the same.

Undoubtedly, when the premises are let out to the tenant and they are sought to be obtained on the ground of need thereof for occupation of the landlord, such need has to be a bonafide need. Analysis of the evidence by the lower appellate Court revealed from the impugned judgment discloses that the landlord wants to expand his business and the suit premises which are situated adjacent to the premises already in occupation of the landlord are required for such expansion and the landlord has grown up family members who want to engage themselves in such business and therefore, the suit premises are required for personal use and occupation of the landlord and his family members. The said finding has been arrived at on the analysis of the evidence on record in proper perspective and therefore, it does not warrant interference by this Court unless it is shown that the same is totally perverse or contrary to the materials on record. The learned advocate for the petitioner, however, has not been able to point out any material on record contrary to the said findings or that the said findings can be said to be not borne out from the record. In the circumstances, bonafide need of the premises having been established and the clear findings on assessment of the evidence on record having been arrived at, there is no case for

interference in writ jurisdiction.

3. It was also sought to be argued that in a case of eviction of the tenant on the ground of bonafide need, the landlord has to submit detail particulars in that regard, however, the Court below ignoring the said fact erred in passing the eviction order. In that connection, reliance is placed in the decision of the Apex Court in **Ganpat v. Rameshwar & Anr.,** reported in 1974 Mah.L.J. 775. That was a case wherein the landlord had not given any detail as to whether the premises are required for his personal use and occupation or for any other purpose. In the case in hand, the landlord has specifically stated that the premises are required for the business purpose. Naturally, the details having been furnished, and in that regard no grievance was made by the petitioner in the Courts below, it is too late for the petitioner to non-suit the respondent on technical ground at the late stage, apart from the fact that the ruling in **Ganpat's case (supra)** has no application to the facts and circumstances of the present case.

5. For the reasons stated above, the petition is rejected. On oral request by the learned advocate for the petitioner, execution of the eviction order shall

stand stayed till 31st January, 2005 subject to the petitioner along with all major family members in occupation of the suit premises submitting necessary usual undertaking to the Registrar (Judl.) assuring that the peaceful and vacant possession will be delivered to the landlord on or before 31st January, 2005 and meanwhile they shall not part with the possession nor shall create any third party interest nor shall induct any third party in the suit premises.

6. Certified copy be expedited.